IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 28418 of 2004(G)

PETITIONER:

M/S.CALICUT GRANITES (PVT) LTD.,
VALLIKKAD, KANNAVETTIKKAVU, MALAPPURAM DISTRICT
REP. BY M.C.MAYIN HAI,MANAGING DIRECTOR.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS:

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1. THE INTELLIGENCE OFFICE,(INVESTIGATION BRANCH), DEPARTMENT OF COMMERCIAL TAXES, MALAPPURAM DIST.

2. THE COMMISSIONER OF COMMERCIAL TAXES, THIRUVANANTHAPURAM.

BY G.P. SRI. K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT DATED 27.7.2001

EXT.P2 TRUE COPY OF THE ASSESSMENT NOTICE DATED 24.8.2001 ISSUED BY THE FIRST RESPONDENT.

EXT.P3 TRUE COPY OF THE LETTER DATED 12.10.2001 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P4 TRUE COPY OF THE ORDER DATED 19.10.2001 OF THE FIRST RESPONDENT.

EXT.P5 TRUE COPY OF THE ORDER DATED 28.8.2002 OF THE COMMISSIONER OF COMMERCIAL TAXES, MALAPPURAM.

EXT.P6 TRUE COPY OF THE NOTICE ISSUED BY THE SECOND RESPONDENT DATED 12.11.2003

EXT.P7 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 27.12.2003

EXT.P8 TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 21.4.2004

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 28418 OF 2004

Dated this the 21st day of November, 2007

JUDGMENT

Heard counsel for the petitioner and Government Pleader. Petitioner is challenging Ext.P8 order whereunder the Commissioner in suo motu revision cancelled the first revisional authority's order reducing penalty levied under Section 45A of the KGST Act by Intelligence Officer and modified the penalty originally levied. Petitioner was running a metal crusher unit with two primary machines and four secondary machines. Secondary machines are of the size 22x9". However, petitioner disclosed the size of the machines in the compounding application for payment of sales tax as 16x9". Besides mis-declaring the size of the machines petitioner also suppressed the number of machines in as much as only two secondary machines were declared for payment of tax for four years from 1997-98 to 2000-01 as against four machines found operated by the petitioner with support of two generators during inspection. The contention of the petitioner is that declaration of size of the machines in the compounding application

is a mistake. So far as the number of secondary machines are concerned, petitioner admits availability of four machines, but submits that only two machines were used for production. In support of petitioner's contention, petitioner's case is that since electricity connection was not there, petitioner was using power generated from two generators purchased by the petitioner. On going through Ext.P8, I find that petitioner admitted that there were four machines but only two machines were offered for payment of tax because only two machines were used for production. Petitioner's contention appears to be illogical because even if machines are alternatively used during service of other machines, tax is payable for all the machines as the levy of tax at compounded rate is based on the number of machines and the size of such machines. Therefore suppression stands proved with the evidence and admission. Therefore Ext.P8 is perfectly in order. Commissioner has found that the first revisional authority passed the order prejudicial to the interests of the department in reducing the penalty to 25% without any justification. So far as quantum of penalty is concerned, original penalty is reduced to 50% by the Commissioner

as against 25% refixed by the first revisional authority. In the circumstances, no modification is called for on quantum of penalty also. W.P. is therefore devoid of any merit and is dismissed. However, petitioner is granted time till 15.1.2008 to pay the balance arrears.

(C.N. RAMACHANDRAN NAIR)
Judge